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|----------------------------------|---|--------------------|
| <b>ROBIN L. BUSH</b>             | ) |                    |
| Claimant                         | ) |                    |
| VS.                              | ) |                    |
|                                  | ) | Docket No. 248,358 |
| <b>STATE OF KANSAS</b>           | ) |                    |
| Respondent                       | ) |                    |
| AND                              | ) |                    |
|                                  | ) |                    |
| <b>STATE SELF INSURANCE FUND</b> | ) |                    |
| Insurance Carrier                | ) |                    |

<sup>1</sup> K.S.A. 44-520.

Claimant started having problems with back pain almost immediately. She attributed this pain to her work with respondent as she first noticed it during her work activities toward the end of her first work day.

She sought treatment on August 18, 1999 with Dr. M. N. Bates, her family physician, and was immediately taken off work. An MRI taken August 31, 1999 showed disk bulges at L3-4 and L4-5.

She saw orthopaedic surgeon Robert L. Eyster, M.D., on September 3, 1999. He ordered physical therapy and kept her off work until September 13, 1999 when he released her with restrictions. The respondent, however, did not immediately return claimant to work. She was instructed to first see the company physician who recommended additional restrictions. When claimant returned to work she performed light duty work until October 28, 1999. Nevertheless, claimant testified her symptoms continued to worsen while working light duty. She continued treating with Dr. Eyster, the company physicians at the Wichita Clinic and with a neurosurgeon, Dilawer H. Abbas, M.D.

Respondent contends claimant failed to provide timely notice of her accidental injury. K.S.A. 44-520 requires notice of accidental injury be given to the employer within 10 days. The time for giving notice can be extended up to 75 days for just cause. Just cause is not the issue here.

In another case, the Board said:

When dealing with injuries that are caused by overuse or repetitive micro-trauma, it can be difficult to determine the injury's cause. It is also often difficult to determine the injury's date of commencement and conclusion. In those situations, injured workers should not be held to absolute precision when considering the requirements of notice and written claim. The test should be whether the employer was placed on reasonable notice of a work-related injury.<sup>2</sup>

Respondent contends claimant knew she was injured but never attributed her injury to her work and never gave notice. Claimant counters that she was told to continue working and, although she did not know the precise cause for her pain or the severity of her injury until she saw the doctor, she did attribute the pain to her work. Claimant's uncontradicted testimony is that she first informed her supervisor, Florence, that she thought her back pain was work-related on August 10, 1999.

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<sup>2</sup> Pope v. Overnite Transportation Company, WCAB Docket No. 237,559 (June 1999).

- Q. What did you tell her on that second day?
- A. I told her that my back was hurting, that I am not used to my back hurting. She told me it is normal, that it is with the job and that it would take about two to three weeks to work it out.<sup>3</sup>

These complaints were repeated to Florence, to the insurance clerk Christina, and eventually to Florence's supervisor, Penny Mincks.

- Q. What did you tell Penny?
- A. I told her that my back had been aching and hurting, I was having a real hard time getting around, and she said that -- the same thing as Florence. It takes a while for you to work out all the muscle aches and stuff.
- Q. Did you tell Penny it happened at work?
- A. No, sir, I did not.
- Q. What did you tell Penny?
- A. I told her that I have been hurting since I started the job. I have not had any problems prior.<sup>4</sup>

Neither Florence nor Christina testified at the preliminary hearing, but Penny Mincks did. She admitted having a conversation with claimant during claimant's first week of employment in which they discussed claimant's back complaints. Ms. Mincks did not dispute claimant's testimony to the effect that she told claimant some back pain would be normal after starting a new job.

Claimant's testimony is that she did not suffer a specific traumatic event, but that instead her condition progressively worsened until she was no longer able to perform her regular job and, although she attributed her condition to work, she was not sure whether she had suffered an accident under workers compensation. The Appeals Board finds claimant's conversations with Florence beginning August 10, 1999, satisfied the requirement to report her injury within 10 days. The Appeals Board also finds that it is more probably true than not that claimant suffered a series of accidental injuries or aggravations. Although claimant alleges accident "each and every working day", there is insufficient evidence of aggravation after claimant returned to work with light duty restrictions. Therefore, the date of accident for determining the timeliness of the notice and written claim is August 16, 1999, the last day claimant worked her regular job.<sup>5</sup> But

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<sup>3</sup> Preliminary Hearing Transcript, at 9.

<sup>4</sup> Preliminary Hearing Transcript, at 10-11.

<sup>5</sup> Treaster v. Dillon Companies, Inc., 267 Kan. 610, 987 P.2d 325 (1999).

even based upon the earliest accident date, claimant has satisfied the 10 day notice claim requirements in K.S.A. 44-520.

The Appeals Board finds claimant has proven a work-related injury from a series of mini-traumas beginning August 9, 1999 and continuing each and every working day up through her last day of regular duty work on or about August 16, 1999, and that timely notice of accidental injury was given.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the November 9, 1999 Order entered by Administrative Law Judge Nelsonna Potts Barnes should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February 2000.

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BOARD MEMBER

c: David H. Farris, Wichita, KS  
John C. Nodgaard, Wichita, KS  
Nelsonna Potts Barnes, Administrative Law Judge  
Philip S. Harness, Director